IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE THIRD DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE GHULAM MOHAMMED

WRIT PETITION NO : 8192 of 1995

Between:

Vaishnapu Sri Rama Chandra Murthy, S/o Somayya
R/o Rajapalem, Dondapudi P.O., Gopalapuram Mandalam, W.G.District.

..... PETITIONER

AND

1 The Secretary to Government, Social Welfare (Tribal Welfare) Department, Secretariat Buildings, Hyderabad.
2 The Agent to Government (District Collector) Eluru, W.G.District.
3 Special Dy Collector (Tribal Welfare) Eluru, W.G.District.
4 Sri Kalam China Mutyalu S/o Komarayya R/o Koya Nagampalem, Polavaram Mandal, W.G.District.

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to call for the records connected with G.O. Rt. No. 92, dt. 16/2/1995 from the Government of Andhra Pradesh Social Welfare (F) Department, Hyderabad and quash the same by the issuance of Writ of Certiorari or any other appropriate Writ, Order or Direction and restore the order of the Special Deputy Collector (Tribal Welfare) Eluru in S.R. No. 84/78, Dt. 4/7/1979 and pass such other order or orders as may be just and necessary.

Counsel for the Petitioner: MR.A.RANCHARYULU

Counsel for the Respondent Nos.1 to 3 : GP FOR SOCIAL WELFARE

The Court made the following :

ORDER: **(per Sri GM,J)**

This writ petition is filed seeking to issue a writ of certiorari or any other appropriate writ calling for the records connected with GO Rt.No.92, dated 16-2-1995 from the 1st respondent-Secretary to Government, Social Welfare (Tribal Welfare) Department, Hyderabad, and to declare the same as being illegal and consequently to quash the same and restore the order dated 4-7-1979 passed by the 3rd respondent-Special Deputy Collector (Tribal Welfare), Eluru.

2. The case of the petitioner is that land to an extent of Hc.1-34 cents in RS No.166/1 situated in Nagampalem Village, fell to his share and he is the owner and possessor of that land. While the matter stood thus, parallel suo-motu proceedings were initiated against the petitioner one by the Settlement Officer, Eluru, under the provisions of AP Schedule Area and Ryotwari Settlement Regulation Act 2 of 1970 and another by the Special Deputy Collector, (Tribal Welfare), Eluru, under the provisions of the AP Scheduled Area Land Transfer Regulation Act 1 of 1959 on the ground that the petitioner being a non-tribal has been in possession of the land belonging to the tribal by obtaining factious sale deeds from the fore-fathers of the tribals and as such the petitioner was liable to be evicted and for restoration of the land to the tribals.

3. It is further the case of the petitioner, that by order dated 30-7-1977, the Settlement Officer, Eluru, rejected his claim for grant of

ryotwari patta on the ground that the sale transactions are void as they are hit by the provisions of AP Schedule Area and Ryotwari Settlement Regulation Act 2 of 1970, on the other hand, by order dated 4-7-1979, the Special Deputy Collector, (Tribal Welfare), Eluru, held that the possession of the subject land by the petitioner was lawful under Regulation 1 of 1959 and as such the provisions of Agency Land Transfer Act, Act 1 of 1917 would not apply.

4. It is also stated by the petitioner that the order dated 30-7-1977 passed by the Settlement Officer, Eluru, was appealed before the appellate authority i.e. the Director of Settlements in AP No.92 of 1978 claiming ryotwari patta for the subject land in RS No.166/1 who by order dated 19-11-1985 allowed the appeal and granted ryotwari patta in favour of the petitioner and the said order dated 19-11-1985 became final.

5. It is further the case of the petitioner that as against the order dated 4-7-1979 passed by the Special Deputy Collector, Eluru, holding the possession of the petitioner as lawful, the 4th respondent herein preferred appeal in SRA No.49 of 1979 before the 2nd respondent-Agent to the Government, Eluru, who in turn by order dated 5-2-1983 allowed the appeal, which was appealed by the petitioner in revision before the 1st respondent-Government of Andhra Pradesh, Hyderabad. The 1st respondent-revisional authority, by the impugned GO Rt. No.92, dated 16-2-1995 dismissed the revision confirming the order dated 5-2-1983 passed by the 2nd respondent setting aside the patta granted to the petitioner by the Special Deputy Collector, Eluru. Aggrieved by the same, the present writ petition is filed by the

petitioner.

6. Heard the learned counsel for the petitioner and the learned Government Pleader for respondents 1 to 3. None appeared for respondent no.4.

7. Learned counsel for the petitioner strenuously contended that inasmuch as the ryotwari patta granted by the Director Settlements, became final and no further revision was preferred against that order, his possession cannot be said to be illegal offending Regulation 1 of 1959. In support of his contention he relied on the decision in PANDI RAMULU v. AGENT TO GOVERNMENT, EG DISTRICT, KAKINANA[1]. At para 4 of the said judgment, the learned single Judge of this Court held thus:

> "Section 7 of the AP Scheduled Areas Ryotwari Settlement Regulation, 1970 lays down that every ryot in the Scheduled areas to which the Regulation applies shall be entitled to a ryotwari patta in respect of all cultivable lands and Section 9 of the Regulation lays down that the Settlement Officer shall inquire into the nature and history of all lands in respect of which ryotwari patta is claimed and decide it. Whenever an order under Section 9 is passed, if somebody feels aggrieved of the order, he has a remedy under sub-Section (3) of Section 9 under which an appeal can be filed. Once the matter is settled under Section 7, the only course open to the claimant against such settlement is to file an appeal under sub-Section (3) of Section 9. No fresh proceedings can be initiated after an order under Section 7 has been passed."

8. Admittedly proceedings of the Director of Settlements in AP No.92 of 1978 granting ryotwari patta for the subject land by order dated 19-11-1985 became final and no further proceedings were initiated as

against that order.

9. The order in appeal in SRA No.49 of 1979 before the 2nd respondent-Agent to the Government, Eluru, preferred by the 4th respondent, was passed on 5-2-1983 and whereas the Director of Settlements, passed order on 19-11-1985 granting ryotwari patta in favour of the petitioner. It is evident that as on the date of considering the proceedings by the 2nd respondent-Agent to the Government, Eluru, the proceedings before the Director of Settlement could not be concluded.

10. But, curiously, a perusal of the impugned GO Rt. No.92, dated 16-2-1995 passed by the 1st respondent-Secretary to Government, Social Welfare (Tribal Welfare) Department, Hyderabad, nowhere the 1st respondent had neither examined nor considered the proceedings dated 19-11-1985 passed by the Director of Settlements granting ryotwari patta in favour of the petitioner. The proceedings dated 19-11-1985 passed by the Director of Settlements were very much available to the 1st respondent and non-consideration of the same recognizing the possession of the petitioner over the subject land, vitiates the impugned proceedings and on this ground alone it is liable to be set aside.

11. In the result, the writ petition is allowed, the impugned order passed in GO Rt.No.92, dated 16-2-1995 by the 1st respondent is hereby set aside remanding the matter to his file for fresh consideration in the light of the observations made hereinabove. Appropriate orders, in accordance with law, be passed in the matter within a period of four weeks from the date of receipt of a copy of this

order. No coercive steps shall be taken against the petitioner till then.

No costs.

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Ghulam Mohammed,J

Dated: 3-3-2005

Nrg

ASST. REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 The Secretary to Government, Social Welfare (Tribal Welfare) Department, Secretariat Buildings, Hyderabad.
2 The Agent to Government (District Collector) Eluru, W.G.District.
3 Special Dy Collector (Tribal Welfare) Eluru, W.G.District.
4. Two CCs to learned Government Pleader for Social Welfare (O.U.T.)

5. 2 CD copies

6 . 1 CC to MR.RANGACHARYULU

*Form-NIC-OGS/WP{**MUK**}*